

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

MICHAEL RODIO,

Plaintiff,

v.

Civil Action No. 04-CV-10006-JGD

R.J. REYNOLDS TOBACCO COMPANY,

Defendant.

**DEFENDANT'S MOTION TO STRIKE  
PORTIONS OF AFFIDAVIT OF MICHAEL RODIO**

Defendant R. J. Reynolds Tobacco Company hereby moves for an order striking Paragraphs 4-6, 9, 11-12, and 14-17 of the Affidavit of Michael Rodio that was submitted in opposition to the Defendant's Motion for Summary Judgment. As described in more detail in the accompanying Memorandum of Law in Support of Defendant's Motion to Strike Portions of Affidavit of Michael Rodio, these paragraphs either conflict with Rodio's deposition testimony or mischaracterize the content of exhibits that are in evidence.

Respectfully submitted,

R.J. REYNOLDS TOBACCO COMPANY

By its attorneys,

/s/ Mark H. Burak

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Dated: September 29, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by first class mail on September 29, 2005

/s/ Mark H. Burak